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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D-2006-64765

MARK A. MAYNER, PT
923 W. Lawrence Street
Mishawaka, IN 46545

A C C U S A T I O N

Physical Therapist License No. PT 24948

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about January 28, 2000, the Physical Therapy Board of California issued Physical Therapist License Number PT 24948 to Mark A. Mayner, PT (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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4. Section 2660 of the Code states:

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

* * *

“(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

* * *

“(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

* * *

“(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.”

5. Section 2661.5 of the Code states in pertinent part as follows:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.”

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1 6. Section 2661 of the Code states:

2 “A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge of a felony or of any offense which substantially
4 relates to the qualifications, functions, or duties of a physical therapist is deemed
5 to be a conviction within the meaning of this article. The board may order the
6 license suspended or revoked, or may decline to issue a license, when the time for
7 appeal has elapsed, or the judgement of conviction has been affirmed on appeal or
8 when an order granting probation is made suspending the imposition of sentence,
9 irrespective of a subsequent order under Section 1203.4 of the Penal Code
10 allowing that person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation,
12 information, or indictment.”

13 7. Section 2305 provides as follows:

14 “The revocation, suspension, or other discipline, restriction, or limitation
15 imposed by another state upon a license or certificate to practice medicine issued
16 by that state, or the revocation, suspension, or restriction of the authority to
17 practice medicine by any agency of the federal government, that would have been
18 grounds for discipline in California of a licensee under this chapter, shall
19 constitute grounds for disciplinary action for unprofessional conduct against the
20 licensee in this state.”

21 8. Section 2684 provides in pertinent part as follows:

22 “(a) Notwithstanding Section 2422, any license or approval for the practice
23 of physical therapy shall expire at 12 a.m. on the last day of the birth month of the
24 licensee or holder of the approval during the second year of a two-year term, if not
25 renewed.

26 “(b) To renew an unexpired license or approval, the licensee or the holder
27 of the approval shall, on or before the dates on which it would otherwise expire,
28 apply for renewal on a form prescribed by the board, pay the prescribed renewal

1 fee, and submit proof of the completion of continuing education or competency
2 required by the board pursuant to Article 6.5 (commencing with Section 2676).

3 The licensee or holder of the approval shall disclose on his or her license renewal
4 application any misdemeanor or other criminal offense for which he or she has
5 been found guilty or to which he or she has pleaded guilty or no contest.”

6 9. California Code of Regulations, title 16, section 1399.20, states in
7 pertinent part as follows:

8 “For the purposes of denial, suspension or revocation of a license, pursuant to
9 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
10 considered to be substantially related to the qualifications, functions or duties of a person
11 holding a license under the Physical Therapy Practice Act if to a substantial degree it
12 evidences present or potential unfitness of a person to perform the functions authorized
13 by the license or approval in a manner consistent with the public health, safety or
14 welfare.”

15 10. Section 141 of the Code states:

16 “(a) For any licensee holding a license issued by a board under the
17 jurisdiction of the department, a disciplinary action taken by another state, by any
18 agency of the federal government, or by another country for any act substantially
19 related to the practice regulated by the California license, may be a ground for
20 disciplinary action by the respective state licensing board. A certified copy of the
21 record of the disciplinary action taken against the licensee by another state, an
22 agency of the federal government, or another country shall be conclusive evidence
23 of the events related therein.

24 “(b) Nothing in this section shall preclude a board from applying a
25 specific statutory provision in the licensing act administered by that board that
26 provides for discipline based upon a disciplinary action taken against the licensee
27 by another state, an agency of the federal government, or another country.”

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 [Bus. & Prof. Code, §§ 2660(d), 2661; Cal. Code Regs., tit. 16, § 1399.20]

4 11. Respondent is subject to disciplinary action under sections 2660
5 subdivision (d), 2661, and California Code of Regulations, title 16, section 1399.20 in that he
6 was convicted of multiple crimes substantially related to the qualifications, functions, or duties of
7 a physical therapist. The circumstances are as follows:

8 San Bernardino County Superior Court Case No. TWV032901

9 A. On January 28, 2001, respondent was arrested for, among other
10 things, driving while under the influence and for driving with a .08% blood alcohol
11 concentration. On October 31, 2001, respondent entered a guilty plea to driving while under the
12 influence. Pronouncement of judgment was withheld and conditional and revocable release was
13 granted for a period of 36 months subject to a number of terms and conditions, including violate
14 no laws.

15 Ada County Superior Court Case No. M0400428

16 B. On or about January 4, 2004, respondent and his girlfriend were
17 driving home after respondent drank approximately seven beers. Respondent and his girlfriend
18 were engaged in a conversation about her cat, and she lowered the volume of the radio.
19 Respondent punched her in the jaw with the back of his right fist. Respondent then struck her in
20 the left eye with his right hand and knocked her contact lens out of her eye. She tried to shield
21 his blows with her purse, but respondent took the purse and threw it out of the window.

22 C. Respondent was charged with misdemeanor domestic violence in
23 violation of Idaho Code section 18-918. On April 4, 2004, respondent entered a guilty plea. He
24 was placed on two years supervised probation and ordered to complete programs in domestic
25 violence and drug and substance abuse.

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1 Ada County Superior Court Case No. M0511569

2 D. On or about August 12, 2005, at approximately 10:15 p.m.,
3 Respondent entered Fred Meyers Store, selected \$783.43 worth of merchandise, and left the store
4 without paying for the items. Respondent was detained by the store's loss prevention manager
5 and arrested by Boise police officers.

6 E. Respondent was charged with felony burglary in violation of Idaho
7 Code section 18-1401 and misdemeanor petit theft in violation of Idaho Code sections 18-2403,
8 subdivision (1), and 18-2407, subdivision (2). On October 6, 2005, respondent entered a guilty
9 plea to petit theft and was placed on two years supervised probation to be served consecutive to
10 the sentence imposed in Case No. M0511754. He was ordered, among other things, to serve 365
11 days in jail and pay a \$1,000 fine.

12 Ada County Superior Court Case No. M0511754

13 F. On or about September 19, 2005, at approximately 9:15 p.m.,
14 respondent entered an Albertson's grocery store in Ada County, Idaho, and filled his shopping
15 cart with approximately \$946 worth of merchandise. Respondent exited the store without paying
16 for the items and loaded approximately \$473 worth of merchandise in his car before an
17 Albertson's employee confronted him. Respondent refused to return the items he had loaded in
18 his car and drove away.

19 G. Respondent was charged with felony burglary in violation of Idaho
20 Code section 18-1401 and misdemeanor felony burglary in violation of Idaho Code sections 18-
21 2403, subdivision (1), and 18-2407, subdivision (2). On October 6, 2005, respondent entered a
22 guilty plea to petit theft and was placed on two years supervised probation. He was ordered,
23 among other things, to serve 365 days in jail and pay a \$1,000 fine.

24 12. Respondent's conduct and subsequent convictions are substantially related
25 to the qualifications, functions or duties of a physical therapist and constitute unprofessional
26 conduct within the meaning of sections 2660, subdivision (d), 2661, and California Code of
27 Regulations, title 16, section 1399.20.

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19. Respondent is subject to disciplinary action under section 2684, subdivision (b) in that he failed to disclose his criminal history on this renewal application. The circumstances are as follows:

21. On or about September 27, 2005, Respondent submitted a License Renewal Application to the Board. The following provision was included in the application:

Respondent, under penalty of perjury, replied in the negative.

FOURTH CAUSE FOR DISCIPLINE
(Dishonesty)
[Bus. & Prof. Code, § 2660(1)]

24. Complainant re-alleges paragraphs 11 and 19, above, as if fully set forth at this point.

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25. Respondent's acts of shoplifting and failing to disclose his misdemeanor conviction for domestic violence constitute grounds for discipline pursuant to section 2660, subdivision (l).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 24948, issued to Mark A. Mayner, PT.

2. Ordering Mark A. Mayner, PT, to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: February 1, 2008

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant